



COURT OF CHANCERY
OF THE
STATE OF DELAWARE

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Re: New Castle County v. Christiana Town Center LLC
C.A. No. 20604
Date Submitted: October 14, 2004

Dear Counsel:

In this letter, the Court addresses two open issues:

1. Motion for Reargument

Defendant Christiana Town Center LLC ("Defendant") has moved for reargument or clarification of Part II of the Court's Memorandum Opinion and Order of August 16, 2004, which required the Defendant to allow access to its

lands for purposes of inspection by experts retained by Plaintiff New Castle County (the “County”). Those lands, and the improvements made by the Defendant, are the subject of this litigation.

Motions for reargument under Court of Chancery Rule 59(f) require the proponent to demonstrate that the Court has misapplied the law or the facts in such a way that the outcome would be different.¹ I am satisfied that the Court did not overlook a controlling principle or decision of law, did not misapply the law, and did not misapprehend the facts. Therefore, the motion for reargument is denied.

The Defendant’s motion for reargument did not merely challenge the Court’s decision; in addition, it sought the additional relief of limiting the duration of the site inspection contemplated by the Court’s order. The County properly argues that a motion for reargument is not the appropriate procedural device for raising new contentions.² However, putting that argument aside, the simple answer to the Defendant’s contention is that the Court’s order anticipated a meaningful and thorough site inspection and the Defendant has offered no reason for

¹ See, e.g., *West Center City Neighborhood Ass’n, Inc. v. West Center Neighborhood Planning Advisory Comm., Inc.*, 2003 WL 23021929, at *1 (Del. Ch. Dec. 18, 2003); *In re ML/EQ Real Estate P’ship Litig.*, 2000 WL 364188, at *1 (Del. Ch. Mar. 22, 2000).

² *Cummings v. Jimmy’s Grille, Inc.*, 2000 WL 1211167, at *2 (Del. Super. Aug. 9, 2000).

concluding that the County is proposing an inspection that would be unreasonable or otherwise unduly burdensome.

2. *In Camera* Inspection

The County has asserted that two documents containing handwritten notes are subject to the attorney-client privilege. These documents, from the file of Thomas Hubbard, have been withheld from the County's response to the Defendant's discovery request, but they were submitted for *in camera* inspection under Mr. Walton's letter of October 14, 2004. The Court has reviewed the two documents. The handwritten notes reflect the advice of counsel and, therefore, are privileged. It should also be noted that versions of the documents without the handwritten notes have been produced by the County.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-NC